



Ghana Integrity Initiative (GII)
Local Chapter of Transparency International



BENEFICIAL OWNER DISCLOSURE ASSESSMENT OF GHANA'S LEGAL FRAMEWORK

GHANA INTEGRITY INITIATIVE (GII) is the local chapter of Transparency International, a global anti-corruption organization based in Berlin, Germany. GII is non-profit/non-governmental civil empowerment organization focused on the delivery of essential themes necessary for the creation of a National Integrity System. GII was established in 1999 and has initiated many anti-corruption interventions including Women, Land and Corruption, Tax Justice, Eliminating the incidence of abuse of incumbency and electoral corruption and Accountable Democratic Institution and System Strengthening (ADISS). Since 29th May, 2016 when the Government of Ghana made a number of pledges at the UN Anti Corruption Summit, TI-UK has supported three countries including Ghana to track the implementation of the pledges. One of the twelve pledges that the Government of Ghana made at the summit was passing a Beneficial Ownership Disclosure law. This was indeed passed in July 2016, and Ghana became the first African country to legislate Beneficial Ownership into law.

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INTRODUCTION

Cases of corruption and tax evasion featured in the media show that the lack of transparency of beneficial ownership facilitates these crimes in Ghana. The government of Ghana has recently taken significant steps to tackle the issue of corruption and illicit financial flows. These improved the country's legislation and enable authorities, business sector and civil society to prevent and uncover corruption.

Ghana at the 2016 London Anti-Corruption Summit was one of the five sub-Saharan countries that made anti-corruption commitments, these include setting up a public company register and providing both domestic and foreign law enforcement bodies full and effective access to beneficial ownership information on companies and other legal entities registered within their jurisdiction. In its Open Government Partnership national action plan (2016-2017) Ghana committed to ensure compliance with the requirements of opening up in the extractive sector "its contracting processes, publish contract and provide information on the beneficial owners of the contract". With the 2016 amendment of the Companies Act Ghana went beyond the EITI/OGP commitment and beneficial ownership transparency rules apply to companies both within and outside of the extractive sector.

The Inter-Governmental Action Group against Money Laundering in West Africa (GIABA) prepared its latest Mutual Evaluation Report on Ghana in 2009 and found the country largely "non-compliant" with the Financial Action Task Force (FATF)'s recommendations on beneficial ownership. In May 2017 GIABA approved the Second Round Mutual Evaluation Report of Ghana and it is yet to be published. In the UNCAC framework the country's money-laundering prevention laws and practice will be reviewed in 2020.

The Companies (Amendment) Act 2016 introduced the definition of beneficial ownership, requirement for companies to keep a register of beneficial owners and to lodge a copy of beneficial owners with the Registrar of Companies. The Central Register will include the current companies registry complemented with beneficial ownership information.

Once the Central Register will be online, open, usable and publicly accessible the beneficial ownership transparency framework of Ghana will be more advanced than several of the most developed countries' in the world. There are few areas where there is still room for improvements and the present report contributes to these efforts.

MAIN FINDINGS

In 2016 Ghana conducted a national risk assessment, in line with the criteria provided by the Financial Action Task Force. It identified high-risk areas in which domestic and foreign corporate vehicles are being used for criminal purposes and the full report has been published online. However it is yet to be communicated to financial institutions or to designated non-financial bodies and professions (DNFBPs).

The present report focuses on beneficial ownership transparency and the main findings are the following:

The Ghanaian anti-money laundering law adequately defines beneficial ownership. Collection, recording and maintaining beneficial ownership information are also properly regulated. In the area of access and verification of beneficial ownership information there are few shortcomings only. The Registrar is not required by law to verify beneficial ownership information or other relevant information against independent and reliable sources and companies have to update beneficial ownership information only within 28 days after they are informed about any change, which time period is too long. The most important question with regard to registers is how the Central Register will be regulated, whether it will be freely online accessible for anyone in line with open data standards. The government commitments are rather promising, but these have not been translated into legislation yet.

There is room for improvement in the area of beneficial ownership information of trusts. Accountable institutions are not required to hold information on all parties to the trust, protectors are not covered. The country also lacks a registry that would collect information, including beneficial ownership information on trusts.

Provisions concerning financial institutions and DNFBPs have few shortcomings only. They cannot get access to the Central Register and the definition of “relevant authorities” is missing. The obligation to refuse and report suspicious transactions are limited to wire-transfers only. Dealers in luxury goods are not listed among accountable institutions.

Domestic and international cooperation provisions are also strong, there are minor issues that should be resolved, such as details of access of foreign competent authorities to the Central Register and providing guidance for them on how to access beneficial ownership information in Ghana.

The regulations on tax authorities' access to beneficial ownership information, as well as the laws on prohibition of bearer shares are adequate too.

Ghanaian laws still allow use of nominees and the incorporation of companies using nominees should be prohibited.

SCORES

The following scores show the extent to which Ghanaian laws match the ten beneficial ownership principles. These results are based on the findings of the present report.

| | |
|--|------|
| Principle 1: Beneficial ownership definition | 100% |
| Principle 2: Identifying and mitigating risk | 80% |
| Principle 3: Acquiring accurate beneficial ownership information | 100% |
| Principle 4: Access to beneficial ownership information | 75% |
| Principle 5: Beneficial ownership of trusts | 50% |
| Principle 6: Access to beneficial ownership of trusts | 67% |
| Principle 7: Duties of businesses and professions | 83% |
| Principle 8: Domestic and international cooperation | 83% |
| Principle 9: Beneficial ownership information and tax evasion | 100% |
| Principle 10: Bearer shares and nominees | 81% |

RECOMMENDATIONS

1. Beneficial Ownership Definition

The definition is in line with the principle, no legislative change is needed.

2. Identifying and mitigating risk

- Communicate the results of the risk assessment to financial institutions and relevant DNFBPs

3. Acquiring Beneficial Ownership Information

This area is in line with the principle, no legislative change is needed.

4. Access to Beneficial Ownership Information

- Adopt legislation that makes the Central Register available for anyone, in line with open data principles.¹
- Define timely manner for the purposes of the Companies Act.
- Mandate the Registrar to verify the beneficial ownership information or other relevant information such as shareholders / directors submitted by legal entities against independent and reliable sources (e.g. other government databases, use of software, on-site inspections, among others) and define rules of the verifications.
- Increase the required speed of updating beneficial ownership information.

5. Beneficial Ownership Information of Trusts

- Law should require accountable institutions to maintain identity information about all parties to a trust, including the protectors.
- In the case of foreign trusts, trust and company service providers should be required by law to proactively disclose to financial institutions / DNFBPs and to competent authorities information about the parties to the trust.

6. Access to Beneficial Ownership Information of Trusts

¹<https://opengovdata.org/>

- Establish a registry in Ghana which collects information on trusts.
- Introduce definition of “timely basis” for the purposes of the AMLA Act.

7. Financial Institutions, Businesses and Professions

- Make Central Register freely accessible for the public including financial institutions. (Alternatively and as an absolute minimum clarify in the Companies Act that financial institutions can have access to the Central Register.)
- Clarify the meaning of “relevant authorities” in Section 331A subsection (3) point b) of the Companies Act.
- Include dealers in luxury goods in the list of accountable institution.
- Extend the requirement of AMLA on refusal of transaction and reporting as suspicious transaction to a broader scope than wire transfers when complete originator information is lacking and such information cannot be obtained upon request.

8. Domestic and International Cooperation

- Clarify in legislation that foreign competent authorities can get access free of charge and without registration to the Central Register.
- Prepare and publish a guidance for foreign authorities on how to access beneficial ownership information in Ghana through the Central Register and also in the period until the Central Register becomes fully operational.
- Review rules whether other authorities should have access to STRs besides the Financial Intelligence Centre.

9. Beneficial Ownership Information and Tax Evasion

- Clarify in legislation that tax authorities can get access free of charge and without registration to the Central Register.

10. Bearer Shares and Nominees

- Prohibit the incorporation of companies using nominees.

1. BENEFICIAL OWNERSHIP DEFINITION

WHY IS THIS IMPORTANT?

An adequate legal definition of beneficial ownership establishes the framework from which all legal responsibilities and obligations emerge. A strong and clear definition assists relevant stakeholders, such as competent authorities or entities with reporting obligations, to understand the scope of their duties. Weak definitions lead to weaknesses in the regulatory and enforcement framework, and to uncertainty in the duties and obligations of reporting entities.

An adequate definition of beneficial ownership in national legislation should focus on the natural (not legal) persons who actually own and take advantage of the capital or assets of the legal person, rather than just the persons who are legally (on paper) entitled to do so. It should also cover those who exercise de facto control, whether or not they occupy formal positions or are listed in the corporate register as holding controlling positions.²

WHAT SHOULD BE IN PLACE?

Top scoring countries define a beneficial owner as a natural person who directly or indirectly exercises ultimate control over a legal entity or arrangement, and the definition of ownership covers control through other means in addition to legal ownership. Lesser scoring countries may define beneficial owners as natural persons, for example owning a certain percentage of shares, but there is no mention of whether control is exercised directly or indirectly or if control is limited to a percentage of share ownership. Lowest scoring countries have either no legal definition of beneficial ownership or the control element is not included.

FINDINGS

Score: 100 %

The Companies Act of Ghana defines beneficial ownership³ as an individual (natural person)

- a) “who directly or indirectly ultimately owns or exercises substantial control over a person or company;
- b) who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons;
- c) on whose behalf a transaction is conducted;

²Transparency International, July 2015.

³The Companies Act 1963 (Act 179) as amended by the Companies Amendment Act, 2016. See the First Schedule to the Act.

- d) who exercises ultimate effective control over a legal person or legal arrangement”

For the purpose of identifying the beneficial owner, Ghanaian law encompasses both the legal right of control based on a substantial shareholding, voting rights or property and “control through any other means”. The Companies Act does not define “substantial control” and “substantial economic benefits”.

RECOMMENDATIONS

The definition is in line with the principle, no legislative change is needed.

2. IDENTIFYING AND MITIGATING RISK

WHY IS THIS IMPORTANT?

An effective anti-money laundering regime requires a good and current understanding of how domestic and/or foreign corporate vehicles and other legal arrangements can be misused for criminal purposes within their jurisdictions, and an understanding of the areas that pose greater risks. A clear understanding of the types of legal persons and arrangements that exist in the country, their formation and registration processes, their different forms and structures and the risks they pose, is crucial to a substantive risk assessment. If they do not understand where the risks lie, countries are not able to effectively regulate and detect money laundering-related offences. For instance, in some countries companies incorporated abroad may be frequently used for laundering the proceeds of corruption. The government needs, then, to ensure that the right policies are in place regarding the registration and operation of foreign companies in their countries. Risk assessments are important because the results help to inform and monitor the country's anti-corruption and anti-money laundering policies, laws, regulations and enforcement strategies. A national risk assessment is also a new requirement within the newly strengthened FATF recommendations, adopted in 2012.⁴

WHAT SHOULD BE IN PLACE?

High scoring countries have conducted recent risk assessments within the last three years, with the consultation of external stakeholders, such as financial institutions, designated non-financial bodies and professions (DNFBPs), such as accountants, lawyers, real estate agents and casinos, as well as civil society organisations. The results, including information on high-risk areas, will have been communicated to financial institutions and DNFBPs and the results of the assessment would have been made public. The risk assessment will at a minimum identify specific sectors or areas at high risk that require enhanced due diligence measures.

FINDINGS

Score: 80 %

In accordance with the Anti-Money Laundering (Amendment) Act, 2014, an assessment of anti-money laundering risks was conducted in April 2016 to satisfy the requirement for an assessment of the money laundering risks every three years. The Ministry of Finance (MoF) through its Financial Intelligence Centre (FIC) is mandated to collate daily Risk Assessment reports that Banks, Non-

⁴ The FATF recommendations, http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

Bank Financial Institutions (NBFIs) and Designated Non-Financial Businesses or Professions (DNFBPs)⁵ are required by law to submit.

The risk assessment is guided by the criteria provided by the Financial Action Task Force (FATF), an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. In the risk assessment authorities, business sector and non-governmental organisations were involved.⁶

The full risk assessment report has been published online on the website of the Securities and Exchange Commission.⁷

The report details varied levels of risks (low – high) and the areas where these risks abound. It details out the need for additional measures to ensure strict adherence to rules / standards for due diligence. In its introduction, it also foresees an action plan as part of the last phase of the assessment.

RECOMMENDATIONS

- Communicate the results of the risk assessment to financial institutions and relevant DNFBPs

⁵Section 22 of Act 874, 2014

⁶The following entities were involved in undertaking and preparing the risk assessment report;

- a. National Security Council Secretariat
- b. Financial Intelligence Centre(FIC)
- c. Attorney General's Department
- d. Ghana Police Service
- e. Narcotic Control Board
- f. Economic and Organised Crime Office
- g. Ghana Revenue Authority
- h. Ghana Immigration Service
- i. Ghana Airport Authority
- j. Representatives of Regulatory Bodies (Bank Of Ghana, National Insurance Commission, Securities and Exchange Commission, National Pensions Regulatory Authority)
- k. Representatives of Compliance Officers from Banks, Insurance Brokers, Security Brokerage Firms, Forex Bureau Operators, Mobile Money Operators, Real Estate Representatives, Casino Operators, Non Profit Organisations, Car Dealers, Gate Keepers, Chamber Of Commerce, Micro Finance Network Representatives

⁷<https://sec.gov.gh/wp-content/uploads/Anti-Money-Laundering/NRA-REPORT-2016.pdf>

3. ACQUIRING BENEFICIAL OWNERSHIP INFORMATION

WHY IS THIS IMPORTANT?

Information on beneficial ownership should be adequate – that is, sufficient to identify the beneficial owner. This means that the information should contain the full name of the beneficial owner, an identification number, their date of birth, nationality, country of residence and an explanation of how control is exercised. Companies should ensure that the actual beneficial owners are identified, not just the legal owners. The information needs to be accurate and current, both at the time the legal entity is created and over time.⁸This means that information about all changes in the ownership and control structure should be updated promptly. Companies should therefore be able to request information from shareholders to ensure that the information held is accurate and up-to-date and shareholders should be required to inform the company about changes to beneficial ownership.

The information must be available in the jurisdiction where the company is incorporated, even when, as is often the case, a company does not have a physical presence there. An absence of information in the jurisdiction of incorporation makes it difficult for supervisors and law enforcement authorities to obtain information when necessary.

WHAT SHOULD BE IN PLACE?

Top scoring countries require legal entities to maintain information on all natural persons who exercise ownership or control of the legal entity, and that information needs to be maintained within the country of incorporation regardless of whether the legal entities have or do not have a physical presence in the country. The law would require shareholders to declare if control is exercised by a third person and there would be a requirement in place for beneficial owners and shareholders to inform the company when there are changes in ownership, or control.

Mid scoring countries may require legal entities to maintain information on natural persons who own or control shares but only in certain cases would shareholders need to declare if control is exercised by a third person. Lowest scoring countries will have no requirement for legal entities to hold beneficial ownership information, nor would nominee shareholders have to declare if they own shares on behalf of another person, nor if there is a change in the ownership of those shares.

FINDINGS

Score: 100 %

⁸Transparency International, *Ending secrecy to end impunity, Tracing the beneficial owner*, February 2014, www.transparency.org/whatwedo/publication/policy_brief_02_2014_ending_secretcy_to_end_impunity_tracing_the_beneficial.

The laws of Ghana provide for that legal persons maintain beneficial ownership information onshore and that information is adequate, accurate, and current.

Legal entities are required to maintain information on their owners as well as on their beneficial owners by keeping a Register of its members.⁹ The Register contains information relating to;

- a. the member's name,
- b. address,
- c. number of shares held,
- d. consideration for the shares
- e. date at which a person ceased to be a member,
- f. date on which the person was entered in the register as a member

Legal entities are further obliged by law¹⁰ to request information from shareholders, and such shareholders are obliged to provide information on the personal details¹¹ of the beneficial ownership of the shares they hold where they are not the beneficial owners of such shares.

A member who is not the beneficial owner shall provide the company with the particulars of the beneficial owner at the time of becoming a member and update the company within twenty eight (28) days of a change in the particulars submitted to the company.

The Companies Act imposes a sanction of a fine of not less than one hundred and fifty (150) penalty units (approximately \$420) (each penalty unit is about \$3) or a term of imprisonment of not less than a year and not more than two years or both where a legal entity fails to give correct information regarding beneficial ownership information or where it gives false information.¹² Additionally, where a company defaults in complying with the requirements above, the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty five (25) penalty units (about \$75) for each day during which the default continues.

Furthermore, each company has to keep in the country a register of its members and this register contains information on beneficial ownership.¹³ In the case of external companies, in addition to the above information, the company is required to provide information regarding the beneficial ownership of the company in a duly notarized statement.¹⁴

Shareholders are required to declare any administration of shares and/or any kind of interest/ownership on behalf of a third person.¹⁵

Beneficial owners and or shareholders are required to report on changes to such ownership within twenty-eight days, including beneficial ownership of shares and any interests in the legal entities when they occur.¹⁶

⁹ Sections 27 & 32 of the Companies Act

¹⁰ Section 32 (2) of the Companies Act

¹¹ The personal details that may be requested include the following:

- a. full name of beneficial owner
- b. date and place of birth
- c. telephone number
- d. nationality and proof of identity
- e. residential, postal and email address
- f. place of work and position held
- g. nature of interest, etc

¹² Section 32 (14) of the Companies Act

¹³ Section 32 of the Companies Act

¹⁴ Section 303 subsection (1) paragraph (ba)

¹⁵ Sections 27 and 32 of the Companies Act

RECOMMENDATIONS

This area is in line with the principle, no legislative change is needed.

¹⁶ Section 32(2) (b) of the Companies Act

4. ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

WHY IS THIS IMPORTANT?

Government bodies responsible for anti-money laundering and control of corruption and tax evasion / avoidance, amongst others, need to have timely access to sufficient, legitimate and verified, and up-to-date information on beneficial ownership, in order for them to be able to conduct their work effectively. Obstacles to accessing information or delays in transferring the information make it harder for competent authorities to follow the money back to the source, and this increases the likelihood of impunity for those that have engaged in corrupt or illegal acts.

As an example, the US Department of Justice's June 2015 indictment of FIFA outlined in detail the methods and mechanisms, including the creation and use of shell companies and nominees that were used to hide and transfer stolen funds. Significantly, the indictment explicitly states that these mechanisms were “designed to prevent the detection of their illegal activities, to conceal the location and ownership of proceeds of those activities, and to promote the carrying on of those activities”.¹⁷

WHAT SHOULD BE IN PLACE?

Top scoring countries explicitly state that all law enforcement bodies, tax agencies and the financial intelligence unit should have timely (that is within 24 hours) access to adequate (sufficient), accurate (legitimate and verified), and current (up-to-date) information on beneficial ownership. Higher scores are given for countries with a central beneficial ownership or company registry that includes all relevant information that grants access within 24 hours. Additional points are given to countries where this information is public. A public, central (unified) register is the most effective and practical way to record information on beneficial ownership and facilitate access to competent authorities.¹⁸ A central registry also supports the harmonisation of the country's legal framework, avoiding double standards.

Top scoring countries also have laws in place mandating the registry authority to verify the information against independent and reliable sources, and requiring legal entities to update the beneficial ownership information within 24 hours.

Lower scores are given to those with decentralised registries, with only partial information, and for those where competent authorities have access to information held by legal entities or other bodies, or who grant access only after a longer period of time. Lower scores are also given to countries where verification only happens in suspicious cases, and where legal entities are only required to update the beneficial ownership information over a longer period, or, indeed, over a non-specific timeframe.

¹⁷United States District Court, Eastern District of New York, *United States v Webb et al.*, 20 May 2015, www.justice.gov/opa/file/450211/download.

¹⁸Transparency International, July 2015

FINDINGS

Score: 75 %

Rules on registers

Generally, the records maintained by the Companies Registry are accessible upon request to the public, but the beneficial information is accessible only to competent authorities according to the law. Ghana is setting up an online Central Register which will build on the existing company register and will include beneficial ownership information. The Government of Ghana has committed to partner with Openownership. Openownership is the Global Beneficial Ownership Register that collects and connects public beneficial ownership information around the world.¹⁹ These commitments also mean that the Central Register will be available to the public. It has also been confirmed by the Registrar of Companies, however rules on access to the Central Register for the public and on fees are not yet included in the laws.

Specifically, the Companies Act provides for the Registrar to make the register available to competent authorities in a timely manner.²⁰ The information source that competent authorities can access for information on beneficial ownership is the Central Register kept by the Registrar of Companies. The following information of the owners and beneficial owners (except vii. for the latter ones) is recorded in the Central Register²¹:

- i. Full name and any former or other name
- ii. Date and place of birth
- iii. Telephone number
- iv. Nationality and proof of identity
- v. Residential, postal and email address
- vi. Place of work and position held
- vii. Nature of the interest including the details of the legal arrangement in respect of the beneficial ownership.

In addition to the Central Register every company in Ghana has to keep a register of its members that includes among other names and addresses of the members, details of the shares they each hold, details of the membership and the nature of the interest of each member. Where a member is not the beneficial owner of the interest, then the above list from (i) to (vii) has to be recorded too and the member has to update the company within twenty-eight days of a change in the particulars submitted on the beneficial owner.²² The company has to report any entry on beneficial ownership information to the Registrar within 28 days.²³

¹⁹ <https://openownership.org/>

²⁰ Section 331A (3) (b)

²¹ Section 27 and section 331A of the Companies Act

²² Section 32 subsection (2) (b) of the Companies Act

²³ Section 32 subsection (6) of the Companies Act

There is no requirement to demonstrate any form of interest before one can access the information held in the register of members held by a company.²⁴ The law is silent on whether the Central Register is accessible according to the same rules.²⁵

There are further detailed rules²⁶ on access to register of members (of a company) if it is closed in accordance with the law, though only for a period of maximum 30 days in a year. In case a company refuses to allow an inspection of its register, the court may compel by order an immediate production of the register for inspection.

The law states that the Registrar shall collaborate with other competent authorities for the purpose of maintaining, verifying and updating the register and on request and in a timely manner, make the company register available to the competent authorities as well as for the public for inspection. This rule remains to be relevant if the Central Register will not provide direct access to beneficial ownership information or some categories of information will not be available for everyone. These details are yet to be regulated.

The Companies Act provides that the information requested has to be provided in a timely manner, though the law does not define what “timely manner” means. There is Ghanaian case law on “reasonable time” which is an issue of fact determinable from circumstances of the particular case.²⁷

Verification

The Companies Act allows the Registrar of Companies to collaborate with other competent authorities for the purpose of maintaining, verifying and updating the register.²⁸ The law does not state that the Registrar should initiate such checks, neither the frequency of the checks and does not make either a provision for what happens in the event a verification is concludes with various outcomes.

RECOMMENDATIONS

- Adopt legislation that makes the Central Register available for anyone, in line with open data principles.²⁹
- Define timely manner for the purposes of the Companies Act.
- Mandate the Registrar to verify the beneficial ownership information or other relevant information such as shareholders / directors submitted by legal entities against independent and reliable sources (e.g. other government databases, use of software, on-site inspections, among others) and define rules of the verifications.
- Increase the required speed of updating beneficial ownership information.

²⁴ Section 33 subsection (1) of the Companies Act and

²⁵ Section 331A

²⁶ Sections 33 and 34 of the Companies Act

²⁷ Case of *Twim & Anor v Barnes* [1992 -93] 1 GBR 383 CA

²⁸ Section 331A subsection (3) of the Companies Act

²⁹ <https://opengovdata.org/>

5. BENEFICIAL OWNERSHIP INFORMATION OF TRUSTS

WHY IS THIS IMPORTANT?

Trusts are the second most used vehicle for corruption, after companies.³⁰ Efforts to tackle money laundering must also tackle secrecy and misuse of trusts, foundations and other legal structures. Trusts enable property or assets to be managed by one person on behalf of another and one challenge to tackling the misuse of trusts is that control and ownership are explicitly separate. Multiple individuals with different statuses (settlor, beneficiary, trustee, for example) could qualify as beneficial owners, making it additionally difficult for law enforcement to follow money trails if not all relationships are captured.³¹

WHAT SHOULD BE IN PLACE?

Top scoring countries require trustees to collect beneficial ownership information for the trusts they administer, including information on the settlor (who donates the assets), the trustee (who manages the arrangement and is the legal owner), the protector (who may act as an intermediary between the settlor and the trustee) and the beneficiaries (who receive the funds).³² Lower scoring countries typically require trustees to maintain information on only some parties to the trust, or only impose such obligations on professional trusts. In countries where domestic trusts are not allowed but the administration of foreign trusts is possible, high scoring countries require trustees to proactively disclose beneficial ownership information to financial institutions and DNFBPs with which they establish a relationship.

FINDINGS

Score: 50 %

Accountable institutions³³ are required to maintain identity information on a settlor, trustee and beneficiary of a domestic or foreign trust.³⁴ The law does not require that the information maintained should cover all parties to the trust. For example, protectors are not covered.

³⁰World Bank/UNODC, 2011: 3

³¹Transparency International, February 2014.

³²Transparency International EU Office, *Fighting money laundering in the EU: From secret companies to public registries*, January 2014, www.transparencyinternational.eu/wp-content/uploads/2014/01/TI-EU-Policy-Paper-Beneficial-Ownership.pdf.

³³ See the First Schedule of the Anti-Money Laundering Act, 2008 (Act 749) (AMLA Act)

³⁴ Section 23 subsection (8) of AMLA Act

Trust and company service providers, including both professional companies and unpaid persons who hold assets in a trust fund separate from their own assets³⁵ are required to ensure to disclose information about the parties to the trust (the trustee, the settlor and the beneficiaries as they don't hold information on protectors) to the Financial Intelligence Centre and competent authorities.³⁶

The Bank of Ghana and Financial Intelligence Centre Anti Money-Laundering/Combating the Financing of Terrorism (AML/CFT) Guidelines provides that financial institutions are required to obtain information regarding clients including trust as part of its Client Due Diligence (CDD) procedure. Also the Anti-Money Laundering Act requires DNFBPs to maintain identity information about parties to a trust.

RECOMMENDATIONS

- Law should require accountable institutions to maintain identity information about all parties to a trust, including the protectors.
- In the case of foreign trusts, trust and company service providers should be required by law to proactively disclose to financial institutions / DNFBPs and to competent authorities information about the parties to the trust.

³⁵ First Schedule of the AMLA Act

³⁶Section 24 subsection (1) of the AMLA Act

6. ACCESS TO BENEFICIAL OWNERSHIP INFORMATION OF TRUSTS

WHY IS THIS IMPORTANT?

Trustees should be required to share with legal authorities all information deemed necessary to identify the beneficial owner in a timely manner, preferably within 24 hours of the request. This is necessary to identify or exclude individuals that are sought in relation to investigations. Competent authorities should have the necessary powers and prerogatives to access information about trusts held by trustees, financial institutions and DNFBPs. Transparency International also believes that tax and law enforcement authorities should have timely, preferably immediate, access to the information (within 24 hours) held by trustees, but we have been unable to score this in this analysis.

WHAT SHOULD BE IN PLACE?

Top scoring countries have laws in place that allow competent authorities to request and access information on ownership and control of trusts held by trustees and other parties, such as financial institutions or DNFBPs. In high scoring countries, the law also clearly states which competent authorities are granted access. In lower scoring countries, competent authorities are not permitted access or only a limited number of authorities are granted access. Finally, additional points are given to G20 countries that collect and maintain information on trusts in a registry. Lower scoring countries may have a registry that is either non-compulsory or does not collect adequate information to identify beneficial ownership.

FINDINGS

Score: 67 %

There is no registry in Ghana which collects information on trusts.

The law permits competent authorities to have access to information on trusts held by trustees, financial institutions, or DNFBPs. The AMLA Act provides that an accountable institution shall keep books and records of all customers and transactions and ensure that the information is available to the Financial Intelligence Centre and other competent authorities.³⁷ Competent Authorities are listed

³⁷ Section 24

in the AMLA Act.³⁸ The accountable institutions have to make the records and underlying information available on a timely basis, though “timely basis” is not defined.

RECOMMENDATIONS

- Establish a registry in Ghana which collects information on trusts.
- Introduce definition of “timely basis” for the purposes of the AMLA Act.

³⁸Section 51

7. FINANCIAL INSTITUTIONS, BUSINESSES AND PROFESSIONS

WHY IS THIS IMPORTANT?

Corrupt figures require financial institutions to be willing to receive and transfer their money, and often seek out the help of professional intermediaries, such as accountants, lawyers and Trust and company service providers (TCSPs) to facilitate the process. Corrupt money often then ends up in the hands of another set of designated non-financial business professions (DNFBPs), such as real estate agents, casinos and luxury goods dealers. This is for two purposes: ultimately to enjoy the proceeds of their criminal activities; and to launder the money to allow it to enter the market later as seemingly “clean” assets.

As an example, two TCSPs based in Latvia acted as the nominee directors and shareholders for a number of companies involved in criminal activities ranging from defrauding governments and investors to arms dealing in Eastern Europe. They acted as nominees for hundreds of companies incorporated in jurisdictions that included the British Virgin Islands, Panama, Cyprus, New Zealand, the US, the UK and Ireland, many of whom were in turn nominal shareholders of many other companies.³⁹

In addition, a review conducted by the UK Financial Standards Authority in 2011 showed that 75% of the banks surveyed failed to carry out proper checks to detect and stop the proceeds of corruption.⁴⁰ In order to make it less lucrative and less easy to launder money, financial institutions and this group of professionals must be supervised so as to not be complicit in money laundering, and they must face sanctions if they do not comply with their obligations under law. Among other measures to curb money laundering, financial institutions and DNFBPs should be required to identify and verify the identity of the beneficial owners of clients when establishing a business relationship or conducting transactions for occasional customers, and to report all suspicious activities in accordance with existing anti-money laundering regulations.⁴¹ Where financial institutions and DNFBPs cannot properly identify the client’s ownership, they should not enter into a business transaction.

Furthermore, it is crucial that both financial institutions and DNFBPs conduct enhanced due diligence on clients who are politically exposed persons (PEPs), individuals (and often relatives or close associates of individuals) who hold or have held a prominent public function, such as a head

³⁹Alex Marriage, *Secret structures, hidden crimes: Urgent steps to address hidden ownership, money laundering and tax evasion from developing countries*, EUROAD, 2013, p. 12, <http://eurodad.org/files/integration/2013/01/Secret-structures-hidden-crimes-web.pdf>.

⁴⁰UK Financial Services Authority, *Banks’ management of high money laundering risk situations*, June 2011, www.fsa.gov.uk/pubs/other/aml_final_report.pdf.

⁴¹Transparency International, *Transparency of legal entities and arrangements*, May 2014, www.transparency.org/files/content/activity/2014_TI_G20PositionPaper_BeneficialOwnership_EN.pdf.

of state or government, senior politicians, senior government, judicial or military officials, senior executives of state-owned corporations, or important political party officials.⁴²

WHAT SHOULD BE IN PLACE?

Financial institutions and DNFBPs should be required by law to identify the beneficial owners of their customers. DNFBPs that should be regulated include, at a minimum, casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries and other independent legal professions when acting on behalf of the legal entity, as well as TCSPs providing services to legal entities.

Higher scoring countries require financial institutions and DNFBPs to verify the beneficial ownership information of their customers and clients and in high-risk cases this should be done independently.

Enhanced due diligence, including ongoing monitoring of the business relationship and provenance of funds, should be conducted when the customer or the beneficial owner is a domestic or a foreign PEP or a close associate of a PEP. If the financial institution or DNFBP cannot identify the beneficial owner, in high scoring countries would not be permitted to proceed with the transaction. High scoring countries require a suspicious transaction report to be submitted if they cannot identify the beneficial owner.

Financial institutions and DNFBPs should have access to beneficial ownership information collected by governments. High scoring countries would make that information available online, for free – for example within a beneficial ownership registry. Lower scoring countries would make it available online, upon registration or upon payment of a fee. Limited points are awarded to countries in which information is only made available upon request or in person.

Finally, high scoring countries permit the application of sanctions to financial institutions' directors and senior management.

Currently, there are big differences between the way financial institutions and businesses and professions are regulated, supervised and sanctioned. As a result, we separate the findings into two sections.

FINDINGS

Score: 83 %

Financial institutions

Bank of Ghana's Anti-Money Laundering / Combating the Financing of Terrorism (AML/CFT) Guideline prescribes the procedure to be followed by financial institutions to identify the beneficial owners of their clients when establishing a business relationship with a client. Financial institutions are required to always identify beneficial owners before or during the course of establishing a business relationship. It is also mandatory to ask potential customers if they are PEPs.⁴³

⁴² Transparency International, *Financial Jargon Buster*, www.transparency.org/glossary#/beneficial-ownership.

⁴³ 1st Schedule of the Companies Amendment Act, see definition of politically exposed persons

The AML/CFT Guideline requires financial institutions to take reasonable measures to verify the identity of beneficial owners. For this verification they have to use “reliable, independently sourced documents, data or information”.⁴⁴The Guideline does not distinguish between high-risk and other customers as regards verifications, all customers have to be verified using independent sources. The AMLA Act and the AML/CFT Guideline also require financial institutions to conduct enhanced due diligence for higher-risk categories of customers which include Politically Exposed Persons (PEP).⁴⁵

The Guideline provides that any financial institution which fails to carry out customer due diligence to ascertain the identities of both the client and the beneficiary should not open the account, commence business relations or perform the transaction. Additionally, there is a requirement that financial institutions report all suspicious transactions to the Financial Intelligence Centre.

If the financial institution is dealing with a wire transfer then they are not allowed to proceed with the transaction if the beneficial owner cannot be identified.⁴⁶ However, the law does not regulate impose the same duty on financial institutions regarding other types of financial transactions including opening an account and other business transactions.

Financial institutions are further required to submit a Suspicious Transaction Report (STR) to the Financial Intelligence Centre when the institution detects some wrongdoing.⁴⁷ Suspicious transactions are to be reported too where the transaction is complex, involves unusually large sums of money; has unusual patterns; or has no apparent or visible economic or lawful purpose.

The Guideline also provides that “financial institutions shall not establish a business relationship until all relevant parties to the relationship have been identified and the nature of the business they intend to conduct ascertained.”⁴⁸ Any financial institution that has already commenced business relations with a client on whom customer due diligence has not been performed is to terminate the business relationship and submit a Suspicious Transaction Report (STR) to the Financial Intelligence Centre.

Financial institutions have access to a register of members, maintained by each company (see chapter 4.) that records information on owners and beneficial owners.

The Companies Act also prescribes that the Registrar is to make this Central Register available to the relevant authorities for inspection on request in a timely manner upon the payment of a reasonable fee, however the law does not mention financial institutions that would have access to the Central Register and neither are these named as “relevant authorities”.⁴⁹ The term “relevant authority” is not defined in the law and it cannot be assumed that financial institutions were relevant authorities.

The “reasonable fee” to be paid for an inspection is with respect to the inspection of a company’s register by persons who are not members of the company.⁵⁰ It must be noted that the Companies Amendment Act was passed in 2016 and the Central Register is not yet fully operational.

Both companies and financial institutions providing services to companies face considerable penalties if they don’t comply with anti-money laundering rules.

⁴⁴1.5 a)

⁴⁵ Section 23 subsection 5

⁴⁶ Section 6 of the AMLA Amendment Act, 2014 (Act 874) as amended Section 23 subsections (21)-(22) of the principal Act;

⁴⁷ Section 1.17 of the Guideline read together with section 30(1) and section 11 of the AMLA Act.

⁴⁸Section 2.0 a) of the Guideline

⁴⁹Section 331A of the Companies Act

⁵⁰ Section 33 of the Companies Act

In the event an company fails to comply with the requirement of including information on beneficial owners in the filing of particulars and register of members of a company, the company and every officer (including directors) commits an offence and is liable on summary conviction to a fine between one hundred and fifty (150) and two hundred and fifty (250) Penalty Units (i.e. between \$450 - \$ 750) penalty units or to a term of imprisonment between one (1) to two (2) years.⁵¹

The AML/CFT Guideline in its introduction also reminds Ghanaian financial institutions “that AML/CFT laws in all the jurisdictions in which they operate should not only designate money laundering and predicate offences but should also prescribe sanctions for non-compliance with the relevant laws and regulations on customer due diligence, non-remittance of prescribed reports and not keeping of appropriate records”. This reminder does not leave much doubt about consequences of non-compliance with the Guideline.

Business and professions

The scope of **designated non-financial bodies and professions (DNFBPs)** as outlined by the Interpretation Section of the AMLA is contained in the scope of “accountable institution” defined under the law. The AMLA requires an accountable institution to conduct on-going customer due diligence on business relationships with the customers of the accountable institution as prescribed by the Anti-Money Laundering Regulations, which include verification of the information on the identity from independent sources.⁵²

The AMLA requires an accountable institution, including DNFBPs, to put in place measures to identify politically exposed persons and other persons whose activities may pose a high risk of money laundering or terrorism financing, and to manage the risk associated with persons prescribed by Regulations, by, among others, exercising enhanced identification, verification and ongoing due diligence procedures with respect to those persons. Furthermore, an authorised officer of an accountable institution responsible for establishing a business relationship with a prospective client of the accountable institution shall perform enhanced due diligence and seek senior management approval before establishing a business relationship with a politically exposed person.

The AMLA specifically states that wire transfers that lack complete originator information and where such information cannot be obtained upon request are to be refused and have to be reported as suspicious transaction within 24 hours.⁵³ The AMLA law is silent on any other type of transaction other than wire transfers.

The law prescribes sanctions for individuals, legal entities and their senior management for non-compliance with the above anti-money laundering rules. Individuals and legal persons violating anti-money laundering rules are liable to criminal penalties.⁵⁴ For several offences each director or an officer of the company is considered to have committed the offence if it is a body corporate, other than a partnership, and in the case of a partnership, each partner or officer of that body is considered to have committed that offence.⁵⁵ These rules don't distinguish between financial institutions and DNFBPs, so these are applicable in both areas.

⁵¹Section 32 of the Companies Act

⁵² Section 23 subsection 5; Anti-Money Laundering Regulations, 2011

⁵³ Section 23 subsections (21) and (22) of AMLA

⁵⁴Section 39 of AMLA

⁵⁵ Section 39 subsection (3) of AMLA

The Companies Act, also includes sanctions and provides that where a company defaults in providing information on the beneficial owners, the company and every officer of the company is liable to the payment of a fine of twenty-five (25) penalty units (about \$75) for each day that the default continues.⁵⁶

There are further rules specific to various DNFBPs:

Trust and Company Service Providers (TCSPs) are defined as “professional companies or unpaid persons who hold assets in a trust fund separate from their own assets and any person in a professional capacity who administers a trust or acts as a trustee but does not include a person who provides trust service as a nominee”.⁵⁷ TCSPs are listed in the law as accountable institutions⁵⁸ and are required to identify the beneficial owners of their customers.⁵⁹

Lawyers are listed in the first schedule of the AMLA as an accountable institution. They are required to conduct customer due diligence, establish and verify the identities of people (including legal persons) they establish relationships with.⁶⁰

Similarly, **accountants** are also listed in the law as accountable institutions when they prepare for, engage in, or carry out a transaction for a client concerning any of the above listed activities.

Real estate agents are listed as accountable institutions.⁶¹ They are required to conduct customer due diligence, establish and verify the identities of people (including legal persons) they establish relationships with. It must be noted that under the AMLA, they are regarded as accountable institutions only to the extent that they are involved in transactions for a client concerning the buying and selling of real estate.

The AMLA defines **dealers in precious metals and precious stones, casinos** as “accountable institutions” which latter included as “operators of games of chance”.

The AMLA does not expressly list **dealers in luxury goods**, though the list is not exhaustive.⁶²

Each accountable institution shall formulate and implement internal rules among others concerning customer due diligence, politically exposed persons, record keeping, reporting of transactions.⁶³ Every accountable institution is required to keep records of their clients and the transactions they engage in and such clients are to include beneficial owners. The AMLA also requires an accountable institution to conduct on-going customer due diligence on business relationships with

⁵⁶Section 32 subsection (15) of Companies Act

⁵⁷ Section 51 of the AMLA; The AML/CFT Guideline quotes the FATF Recommendations, 2012 as “Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.”

⁵⁸ First Schedule of the Anti-Money Laundering Act, 2008 (Act 749) (AML Act)

⁵⁹ Section 23 of AMLA

⁶⁰ Section 23 of AMLA

⁶¹In the first schedule of the AMLA

⁶²The first schedule of AMLA begins with the phrase „Accountable institution includes”.

⁶³ Section 40 of AMLA

the customers of the accountable institution as prescribed by the Anti-Money Laundering Regulations.

RECOMMENDATIONS

- Make Central Register freely accessible for the public including financial institutions. (Alternatively and as an absolute minimum clarify in the Companies Act that financial institutions can have access to the Central Register.)
- Clarify the meaning of “relevant authorities” in Section 331A subsection (3) point b) of the Companies Act.
- Include dealers in luxury goods in the list of accountable institution.
- Extend the requirement of AMLA on refusal of transaction and reporting as suspicious transaction to a broader scope than wire transfers when complete originator information is lacking and such information cannot be obtained upon request.

8. DOMESTIC AND INTERNATIONAL COOPERATION

WHY IS THIS IMPORTANT?

Cooperation between domestic authorities that hold information on beneficial ownership or information that could be helpful in identifying the beneficial owner is essential. Governments should thus ensure that there is a good understanding regarding which parties / bodies hold and have an obligation to maintain basic and beneficial ownership information. This will also help to avoid duplication of work and resources.

Criminals often choose to conceal their identities behind a chain of different companies incorporated in different jurisdictions, thus making it harder for law enforcement authorities to locate and obtain information on the ownership and control structure. Accessing foreign data on beneficial ownership is one of the main challenges reported by legal authorities surveyed in the EU.⁶⁴ Against this backdrop it is important that countries facilitate access to beneficial ownership information by foreign authorities in a timely and effective manner.

WHAT SHOULD BE IN PLACE?

Domestic and foreign authorities should be able to access beneficial ownership information held by other authorities in the country in a timely manner – for instance, through access to central beneficial ownership registries.

High scoring countries have no restrictions in place related to sharing information between domestic bodies, and accessing that information is efficient. A central database therefore scores more points than several databases. Lower scores are given to countries in which domestic authorities can only access beneficial ownership information through written requests or memoranda of understanding – or worse, through court orders.

In relation to international cooperation, high scoring countries have clear procedural requirements to guide foreign jurisdictions making requests. High scoring countries have laws in place that allow competent authorities to use their investigatory powers to respond to international requests. Low scoring countries have significant legal restrictions in place that prevent good cooperation and sharing of information.

Moreover, Transparency International believes that ensuring information on beneficial ownership is accessible would help cross-border investigations, allowing foreign law enforcement authorities to access relevant information discreetly and at short notice. Public registries containing beneficial ownership information would also reduce the need to make lengthy mutual legal assistance requests, which is especially helpful for countries with limited resources.⁶⁵

⁶⁴Transcrime, 2013

⁶⁵Transparency International, May 2014.

FINDINGS

Score: 83 %

The AMLA provides for those cases when a supervisory body or a revenue agency becomes aware or believes that an accountable institution (financial institutions, DNFBPs, etc. - see chapter 7 for details) has received or is about to receive proceeds of unlawful activities or may be used for money-laundering. In such events the supervisory body or revenue agency has to advise the Financial Intelligence Centre (FIC) and pass on relevant information. Also when the FIC believes that a supervisory body or revenue agency has such information it can request a confirmation or rebuttal.⁶⁶

The Companies Act provides for setting up a Central Register. It will be available for the authorities to obtain all particulars of members of the Company including particulars of all beneficial owners. According to the Companies Act “the Registrar shall (a) collaborate with other competent authorities for the purpose of maintaining and verifying and updating the register; and (b) on request and in a timely manner, make the register available to the relevant authorities for inspection.”⁶⁷The Register has not been implemented yet and there are currently no rules on its implementation have been made known.

There are significant restrictions on sharing confidential information. Suspicious Transaction Reports (STRs) are strictly confidential, as provided for in the Anti-Money-Laundering Act. The Act forbids the disclosure of information relating to suspicious transactions. The only institution that has the right to confidential information is the FIC. However, this information could be shared with a customer or third party if it is for the effective application of the Act or if it is to prevent a person from committing an offence.

The Companies Act is not specific on beneficial ownership information request from foreign jurisdictions. However, the Central Register is accessible to all (local and foreign) competent authorities. The Companies Act does not distinguish between domestic and foreign competent authorities.⁶⁸ Thus, upon request the authority can request for the information in the same manner as a local competent authority. The information is not yet available online but it will be in a manual and electronic format which will be available upon request. Ghana Integrity Initiative assumes that the Central Register will be available for foreign authorities without registration or payment of fee.

The AMLA allows competent authorities to respond to a request from foreign judicial or enforcement authorities. Informal information gathered indicates that there have been cases of Mutual Legal Assistance (MLA) from Ghana to other jurisdictions and vice versa. Ghana received twenty MLA requests from other jurisdictions between September 2014 and August 2015. Seven of the cases are related to money laundering and terrorism financing.

However, there are restrictions on exchange of information or assistance with foreign authorities. The Banks and Specialised Deposit-Taking Institutions Act, 2016 sets rules of bank secrecy and with some exceptions⁶⁹ forbids disclosure of information without the customer’s prior written

⁶⁶ Section 29 of AMLA

⁶⁷Section 331A subsection (3) of Companies Act

⁶⁸ Section 331A subsection (4) of Companies Act

⁶⁹ The law allows customer information to be provided to the Bank of Ghana, the Ghana Revenue Authority, the Financial Intelligence Centre, the Collateral Registry, or the Securities Exchange Commission. Information can also be given in accordance with the provisions of the Credit Reporting Act, or the Ghana Deposit Protection Act.

consent.⁷⁰ The duty of confidentiality also does not apply in situations such as where the customer is declared bankrupt or insolvent in Ghana, or, in the case of a company, if it is being wound up, or where the bank or specialised deposit-taking institution is required to make a report or provide additional information on a suspicious transaction to the Financial Intelligence Centre.

Where the Bank of Ghana is satisfied that a foreign supervisory institution has the obligation to protect the confidentiality of the information imparted, the Bank of Ghana may enter into an agreement or arrangement for coordination, cooperation, and the exchange of information with that foreign supervisory institution.

RECOMMENDATIONS

- Clarify in legislation that foreign competent authorities can get access free of charge and without registration to the Central Register.
- Prepare and publish a guidance for foreign authorities on how to access beneficial ownership information in Ghana through the Central Register and also in the period until the Central Register becomes fully operational.
- Review rules whether other authorities should have access to STRs besides the Financial Intelligence Centre.

⁷⁰ Section 146

9. BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

WHY IS THIS IMPORTANT?

Current estimates of undeclared offshore wealth range from conservative estimates of US\$7 trillion⁷¹ (which still amounts to 8% of the world's personal financial wealth) to US\$21–32 trillion.⁷² Similar methods and vehicles are used by individuals wishing to evade or avoid paying tax as are used by those siphoning off corrupt funds out of a country. It is important that tax authorities also have access to beneficial ownership information to prevent tax evasion and recover funds, and that they face no restrictions on sharing information internationally in light of the cross-border nature of the theft taking place.

WHAT SHOULD BE IN PLACE?

High scoring countries permit tax authorities to access beneficial ownership information maintained by domestic authorities online and for free, for example through a registry. Countries receive fewer points if they can only access the information upon submission of a specific motivated request. Countries in which the law imposes significant restrictions on sharing beneficial ownership information with domestic tax authorities score worst.

With regard to the sharing of tax information internationally, points are awarded where there are mechanisms in place, such as memoranda of understanding or treaties, to facilitate the exchange of information between tax authorities and foreign counterparts.

FINDINGS

Score: 100 %

The Ghana Revenue Authority is one of the competent authorities. It can access information on beneficial ownership upon request and in a timely manner. The sharing of information with tax authorities may be restricted by professional secrecy (for example attorney-client privilege). However, a person with access to the books, accounts, records, financial statements or other document of a bank or a specialised deposit-taking institution is permitted to provide customer

⁷¹"The True Cost of Hidden Money, a Piketty Protégé's Theory on Tax Havens", *New York Times*, 15 June 2014, www.nytimes.com/2014/06/16/opinion/a-piketty-protoges-theory-on-tax-havens.html.

⁷²Tax Justice Network, *The Price of Offshore Revisited*, July 2012, www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf.

information to the Ghana Revenue Authority, the Financial Intelligence Centre, and other statutory bodies.

There is a mechanism to facilitate the exchange of information between tax authorities and their foreign counterparts. Ghana has signed the Convention on Mutual Administrative Assistance in Tax Matters, a multilateral agreement developed by the Council of Europe and the OECD.⁷³ The Convention allows for tax co-operation and exchange of information and helps countering cross-border tax evasion and ensures compliance with national tax laws, while respecting the rights of taxpayers.

RECOMMENDATIONS

- Clarify in legislation that tax authorities can get access free of charge and without registration to the Central Register.

⁷³<http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>

10. BEARER SHARES AND NOMINEES

WHY IS THIS IMPORTANT?

Bearer shares are “company shares that exist in a certificate form ... whoever is in physical possession of the bearer shares is deemed to be the owner”.⁷⁴As the transfer of shares requires only the delivery of the certificate from one person to another, they allow for anonymous transfers of control and pose serious challenges for money laundering investigations.

Nominees act as the legal manager, owner or shareholder of limited companies or assets. They act on behalf of the real manager, owner or shareholder of these entities and often are the only names indicated in paperwork. These nominees obscure the reality of the company’s ownership and control structure, and are often used when the beneficial owners do not wish to disclose their identity or role in the company.

WHAT SHOULD BE IN PLACE?

Bearer shares should be prohibited and until they are phased out they should be converted into registered shares or required to be held with a regulated financial institution or professional intermediary. High scoring countries prohibit bearer shares by law. Lower scoring countries permit bearer shares but there is a process in place for them to be converted into registered shares. Limited points are available to countries where bearer share holders should notify the company of their identity, and that information is recorded by the company.

Countries that also prohibit the incorporation of companies using nominees score highly. Where nominees are permitted, countries can gain points if nominees are required by law to disclose the identity of the beneficial owners on whose behalf they are working at the time of registering the company. Additional points can be gained by countries where nominees are licensed and if the law requires that professional nominees keep records of their clients for a certain period of time.

FINDINGS

Score: 81 %

Ghanaian law does not allow the issuance of bearer shares. The Companies Act provides that a company is required to keep a register in Ghana of its members and enter in the register among other things, the names and addresses of the members and, in the case of a company having shares, a share certificate held by each member distinguishing each share by a number so long as the share has a number. The share certificate must also state among other things, the name and

⁷⁴World Bank/UNODC Stolen Asset Recovery Initiative, 2011.

address of the registered holder.

Companies Act provides that individuals or entities are allowed to hold shares on behalf of other persons (i.e. beneficial owner).⁷⁵ The details of the beneficial owner(s) are required to be disclosed to the Companies Registry. Nominee directors are also allowed but their details have to be furnished to the Registrar of Companies.

The Companies Act also requires that during the filing of particulars for registration of the company, where a subscriber is not the beneficial owner of the interest, the name, date and place of birth, telephone number, nationality and proof of identity, among other details, must be provided of the beneficial owner.

Professional nominees are not provided for under the law and therefore there is no requirement to be licensed. However, under the AMLA an entity or person that deals in shares, stocks, bonds or other securities for or on behalf of a customer is required to keep books and records with respect to their customers and transactions and must ensure that the records and all relevant information are available on a timely basis to competent authorities. The books and records are to be kept for a period of not less than 5 years in the case of account files, business correspondence, and copies of documents evidencing the identities of customers and beneficial owners.

RECOMMENDATIONS

- Prohibit the incorporation of companies using nominees.

⁷⁵ Section 27

ANNEX 1: METHODOLOGY

To monitor the extent to which Ghana is fulfilling its commitments and the adequacy of its beneficial ownership transparency framework, Transparency International conducted an assessment of the current level of compliance with each of the 10 beneficial ownership principles. These principles were adopted by the G20. Transparency International conducted several surveys using these principles to assess both G20 and non-G20 countries. The assessment sheds light on how strong the current beneficial ownership transparency system is within Ghana, and which parts of the system should be strengthened.

The 10 beneficial ownership principles build on the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - The FATF Recommendations.⁷⁶ Transparency International's *The Technical guide: implementing the G20 beneficial ownership principles*⁷⁷ provides the basis of the questionnaire applied in this research and describes the current applicable international standards.

DATA COLLECTION AND VERIFICATION

All data for the questionnaire was collected by desk research conducted between May and August 2017 by Transparency International national chapters or pro bono lawyers. The sources consulted included relevant domestic laws, rules and regulations, as well as available reports and assessments produced by international and non-governmental organisations. Data for each question was recorded and the exact sources documented. The research was based on the latest available documentation. Where recent legislation has been adopted but not yet implemented, the researcher answered the questions by considering the legal framework in force.

All collected data was peer-reviewed by in-country experts and pro bono lawyers. The data was also verified and checked for consistency by researcher of the Transparency International secretariat.

The GHEITI is the lead entity on Beneficial Ownership advocacy in Ghana. GHEITI is made up of both government and CSOs. The questionnaire was shared with the members of GHEITI to make input. The feedback received was incorporated into the report. Further, GII validated the report at a forum jointly organised by GII, GHEIT and NREGI and the final report shared to all our key stakeholders and the public.

⁷⁶ http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

⁷⁷ Available at

https://www.transparency.org/whatwedo/publication/technical_guide_implementing_the_g20_beneficial_ownership_principles

QUESTIONNAIRE STRUCTURE AND SCORING

Questions were designed in order to capture and measure the necessary components that should be in place for Ghana to be implementing each of the 10 principles to best effect. The number of questions per principle, and thus the total number of points available per principle, varies depending on the complexity and number of issues covered in the original principle. Within this framework, the total number of possible points under each principle also varies.

We used a four-point scoring scale. The model answers pertaining to each are specific to each question, but the principles underlying each score are, generally, as follows:

| | |
|---|---|
| 4 | The country's legal framework is fully in line with the principle. |
| 3 | The country's legal framework is generally in line with the principle, but with shortcomings. |
| 2 | There are some areas in which the country is in line with the principle, but significant shortcomings remain. |
| 1 | The country's legal framework is not in line with the principle, apart from some minor areas. |
| 0 | The country's legal framework is not at all in line with the principle. |

LIMITATIONS

It is important to note that this research focuses specifically on assessing the legal framework related to beneficial ownership transparency and it is beyond its scope to analyse how laws and regulations are implemented and enforced in practice. However, such research would be an important follow-up to this assessment.

Transparency International has not undertaken to verify whether the information disclosed on government websites or in reports is complete or accurate. Moreover, this assessment focuses on what we consider to be the key issues necessary to implement the 10 principles and to ensure an adequate beneficial ownership transparency framework. There may be other issues that are also relevant but not covered by this assessment.

Finally, we have not weighted the principles. We are aware that some principles are more complex than others; however, we do not take a position within this report on whether some are more important than others. Therefore, the overall scoring is a general analysis of how countries are performing across all the principles

ANNEX 2: QUESTIONNAIRE AND SCORING CRITERIA

Set out below are the questions that were asked, guidance on what we were looking to be in place and the number of points awarded for each type of response.

PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Guidance: The beneficial owner should always be a natural (physical) person and never another legal entity. The beneficial owner(s) is the person who ultimately exercises control through legal ownership or through other means.

Q1. To what extent does the law in your country clearly define beneficial ownership?

Scoring criteria:

4: Beneficial owner is defined as a natural person who directly or indirectly exercises ultimate control over a legal entity or arrangement, and the definition of ownership covers control through other means, in addition to legal ownership.

1: Beneficial owner is defined as a natural person [who owns a certain percentage of shares] but there is no mention of whether control is exercised directly or indirectly, or if control is limited to a percentage of share ownership.

0: There is no definition of beneficial ownership or the control element is not included.

PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Guidance: Countries should conduct assessments of cases in which domestic and foreign corporate vehicles are being used for criminal purposes within their jurisdictions to determine typologies that indicate higher risks. Relevant authorities and external stakeholders, including financial institutions, DNFBPs, and non-governmental organisations, should be consulted during the risk assessments and the results published. The results of the assessment should also be used to inform and monitor the country's anti-corruption and anti-money laundering policies, laws, regulations and enforcement strategies.

Q2: Has the government during the last three years conducted an assessment of the money laundering risks related to legal persons and arrangements?

4: Yes

0: No

Q3: Were external stakeholders (e.g. financial institutions, designated non-financial businesses or professions (DNFBPs), non-governmental organisations) consulted during the

assessment?

4: Yes, external stakeholders were consulted.

0: No, external stakeholders were not consulted or the risk assessment has not been conducted.

Q4. Were the results of the risk assessment communicated to financial institutions and relevant DNFBPs?

4: Yes, financial institutions and DNFBPs received information regarding high-risks areas and other findings of the assessment.

0: No, the results have not been communicated.

Q5: Has the final risk assessment been published?

4: Yes, the final risk assessment is available to the public.

2: Only an executive summary of the risk assessment has been published.

0: No, the risk assessment has not been published or conducted.

Q6: Did the risk assessment identify specific sectors / areas as high-risk, requiring enhanced due diligence?

4: Yes, the risk assessment identifies areas considered as high-risk where additional measures should be taken to prevent money laundering.

0: No, the risk assessment does not identify high-risk sectors / areas.

PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Guidance: Legal entities should be required to maintain accurate, current, and adequate information on beneficial ownership within the jurisdiction in which they were incorporated. Companies should be able to request information from shareholders to ensure that the information held is accurate and up-to-date, and shareholders should be required to inform changes to beneficial ownership.

Q7: Are legal entities required to maintain beneficial ownership information?

4: Yes, legal entities are required to maintain information on all natural persons who exercise ownership of control of the legal entity.

3: Yes, legal entities are required to maintain information on all natural persons who own a certain percentage of shares or exercise control in any other form.

0: There is no requirement to hold beneficial ownership information, or the law does not make any distinction between legal ownership and control.

Q8: Does the law require that information on beneficial ownership has to be maintained within the country of incorporation of the legal entity?

4: Yes, the law establishes that the information needs to be maintained within the country of incorporation regardless whether the legal entity has or not physical presence in the country.

0: There is no requirement to hold beneficial ownership information in the country of incorporation or there is no requirement to hold beneficial ownership information at all.

Q9: Does the law require shareholders to declare to the company if they own shares on behalf of a third person?

- 4: Yes, shareholders need to declare if control is exercised by a third person.
- 2: Only in certain cases do shareholders need to declare if control is exercised by a third person.
- 0: No, there is no such requirement.

Q10: Does the law require beneficial owners / shareholders to inform the company regarding changes in share ownership?

- 4: Yes, there is a requirement for beneficial owners / shareholders to inform the company regarding changes in share ownership.
- 0: No, there is no requirement for beneficial owners or shareholder to inform the company regarding changes in share ownership.

PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Guidance: All relevant competent authorities, including all bodies responsible for anti-money laundering, control of corruption and tax evasion / avoidance, should have timely (that is within 24 hours) access to adequate (sufficient), accurate (legitimate and verified), and current (up-to-date) information on beneficial ownership. Countries should establish a central (unified) beneficial ownership registry that is freely accessible to the public. At a minimum, beneficial ownership registries should be open to competent authorities, financial institutions and DNFBPs.

Beneficial ownership registries should have the mandate and resources to collect, verify and maintain information on beneficial ownership. Information in the registry should be up-to-date and the registry should contain the name of the beneficial owner(s), date of birth, address, nationality and a description of how control is exercised.

Q11: Does the law specify which competent authorities (e.g. financial intelligence unit, tax authorities, public prosecutors, anti-corruption agencies, etc.) are allowed to have access to beneficial ownership information?

- 4: Yes, the law specifies that all law enforcement bodies, tax agencies and the financial intelligence unit should have access to beneficial ownership information
- 2: Only some competent authorities are explicitly mentioned in the law.
- 1: The law does not specify which authorities should have access to beneficial ownership information.

Q12: Which information sources are competent authorities allowed to access for beneficial ownership information?

- 4: Information is available through a central beneficial ownership registry/company registry.
- 3: information is available through decentralised beneficial ownership registries/ company registries.
- 1: Authorities have access to information maintained by legal entities / or information recorded by tax agencies/ or information obtained by financial institutions and DNFBPs.
- 0: Information on beneficial ownership is not available.

Q13. Does the law specify a timeframe (e.g. 24 hours) within which competent authorities can gain access to beneficial ownership?

4: Yes, immediately /24 hours.

3: 15 days.

2: 30 days or in a timely manner.

1: Longer period.

0: No specification.

Q14. What information on beneficial ownership is recorded in the central company registry?

In countries where there are sub-national registries, please respond to the question using the state/province registry that contains the largest number of incorporated companies.

4: All relevant information is recorded: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.

2: Information is partially recorded.

1: Only the name of the beneficial owner is recorded.

0: No information is recorded.

Q15. What information on beneficial ownership is made available to the public?

4: All relevant information is published online: name of the beneficial owner(s), identification or tax number, personal or business address, nationality, country of residence and description of how control is exercised.

2: Information is partially published online, but some data is omitted (e.g. tax number).

1: Only the name of the beneficial owner is published/ or information is only made available on paper / physically.

0: No information is published.

Q16: Does the law mandate the registry authority to verify the beneficial ownership information or other relevant information such as shareholders / directors submitted by legal entities against independent and reliable sources (e.g. other government databases, use of software, on-site inspections, among others)?

4: Yes, the registry authority is obliged to conduct independent verification of the information provided by legal entities regarding ownership of control.

2: Only in suspicious cases.

0: No, the information is registered as declared by the legal entity.

Q17. Does the law require legal entities to update information on beneficial ownership, shareholders and directors provided in the company registry?

4: Yes, legal entities are required by law to update information on beneficial ownership or information relevant to identifying the beneficial owner (directors/ shareholders) immediately or within 24 hours after the change.

3: Yes, legal entities are required to update the information on beneficial ownership or directors / shareholders within 30 days after the change.

2: Yes, legal entities are required to update the information on the beneficial owner or directors/ shareholders on an annual basis.

1: Yes, but the law does not specify a specific timeframe.

0: No, the law does not require legal entities to update the information on control and ownership.

PRINCIPLE 5: TRUSTS

Guidance: Trustees should be required to collect information on the beneficiaries and settlors of the trusts they administer. In countries where domestic trusts are not allowed but the administration of trusts is possible, trustees should be required to proactively disclose beneficial ownership information when forming business relationship with financial institutions and DNFBPs. Countries should create registries to capture information about trusts, such as trust registries or asset registries, to be consulted by competent authorities exclusively or open to financial institutions and DNFBPs and / or the public.

Q18 Does the law require trustees to hold beneficial information about the parties to the trust, including information on settlors, the protector, trustees and beneficiaries?

4: Yes, the law requires trustees to maintain all relevant information about the parties to the trust, including on settlors, the protector, trustees and beneficiaries.

2: Yes, but the law does not require that the information maintained should cover all parties to the trust (e.g. settlors are not covered).

1: Yes, but only professional trusts are covered by the law.

0: Trustees are not required by law to maintain information on the parties to the trust.

Q19. In the case of foreign trusts, are trustees required to proactively disclose to financial institutions / DNFBPs or others information about the parties to the trust?

4: Yes, the law requires trustees to disclose information about the parties to the trust, including about settlors, the protector, trustees and beneficiaries.

0: Trustees are not required by disclose information on the parties to the trust.

PRINCIPLE 6: COMPETENT AUTHORITIES' ACCESS TO TRUST INFORMATION

Guidance: Trustees should be required to share with legal authorities all information deemed relevant to identify the beneficial owner in a timely manner, preferably within 24 hours of the request. Competent authorities should have the necessary powers and prerogatives to access information about trusts held by trustees, financial institutions and DNFBPs.

Q20 Is there a registry which collects information on trusts?

4: Yes, information on trusts is maintained in a registry.

2: Yes, there is a registry which collects information on trusts but registration is not mandatory or information registered is not sufficiently complete to make it possible to identify the real beneficial

owner.

0: No, there is no registry.

Q21. Does the law allow competent authorities to request / access information on trusts held by trustees, financial institutions, or DNFBPs?

4: Yes, competent authorities are able to access beneficial ownership information held by trustees and financial institutions, or access information collected in the registry.

2: Competent authorities have to request information or only have access to information collected by financial institutions.

0: No.

Q22. Does the law specify which competent authorities (e.g. financial intelligence unit, tax authorities, public prosecutors, anti-corruption agencies, etc.) should have timely access to beneficial ownership information held by trustees?

4: Yes.

2: Some authorities.

0: No.

PRINCIPLE 7: DUTIES OF BUSINESSES AND PROFESSIONS

Guidance: Financial institutions and DNFBPs should be required by law to identify the beneficial owner of their customers. DNFBPs that should be regulated include, at a minimum, casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries and other independent legal professions when acting on behalf of the legal entity, as well as trust or company service providers (TCSs) when they provide services to legal entities. The list should be expanded to include other business and professions according to identified money laundering risks. In high-risk cases, financial institutions and DNFBPs should be required to verify – that is, to conduct an independent evaluation of – the beneficial ownership information provided by the customer.

Enhanced due diligence, including ongoing monitoring of the business relationship and provenance of funds, should be conducted when the customer is a politically exposed person (PEP) or a close associate of a PEP. The failure to identify the beneficial owner should inhibit the continuation of the business transaction and / or require the submission of a suspicious transaction report to the oversight body. Moreover, administrative, civil and criminal sanctions for non-compliance should be applicable for financial institutions and DNFBPs, as well as for their senior management. Finally, they should have access to beneficial ownership information collected by the government.

FINANCIAL INSTITUTIONS

Q23. Does the law require that financial institutions have procedures for identifying the beneficial owner(s) when establishing a business relationship with a client?

4: Yes, financial institutions are always required to identify the beneficial owners of their clients when establishing a business relationship.

2: Financial institutions are required to identify the beneficial owners only in cases considered as high-risk or the requirement does not cover the identification of the beneficial owners of both natural and legal customers.

0: No, there is no requirement to identify the beneficial owners.

Q24: Does the law require financial institutions to also verify the identity of beneficial owners identified?

4: Yes, the identity of the beneficial owner should always be verified through, for instance, a valid document containing a photo, an in-person meeting, or other mechanism.

0: No, there is no requirement to verify the identity of the beneficial owner.

Q25: In what cases does the law require financial institutions to conduct independent verification of the information on the identity of the beneficial owner(s) provided by clients?

4: Yes, independent verification is always required or required in cases considered as high-risk (higher-risk business relationships, cash transactions above a certain threshold, foreign business relationships).

0: No, there is no legal requirement to conduct independent verification of the information provided by clients.

Q26 Does the law require financial institutions to conduct enhanced due diligence in cases where the customer or the beneficial owner is a PEP or a family member or close associate of a PEP?

4: Yes, financial institutions are required to conduct enhanced due diligence in cases where their client is a foreign or a domestic PEP, or a family member or close associate of a PEP.

2: Yes, but the law does not cover both foreign and domestic PEPs, and their close family and associates.

0: No, there is no requirement for enhanced due diligence in the case of PEPs and associates.

Q27 Does the law allow financial institutions to proceed with a business transaction if the beneficial owner has not been identified?

4: No, financial institutions are not allowed to proceed with transaction if the beneficial owner has not been identified.

0: Yes, financial institutions may proceed with business transactions regardless of whether or not the beneficial owner has been identified.

Q28: Does the law require financial institutions to submit suspicious transaction reports if the beneficial owner cannot be identified?

4: Yes.

2: Only if there is enough evidence of wrongdoing.

0: No.

Q29 Do financial institutions have access to beneficial ownership information collected by the government?

- 4: Yes, online for free through, for instance, a beneficial ownership registry.
- 3: Online, upon registration.
- 2: Online, upon registration and payment of fee.
- 1: Upon request or in person.
- 0: There is no access to beneficial ownership information collected by the government.
-

Q30: Does the law allow the application of sanctions to financial institutions' directors and senior management?

- 4: Yes, the law envisages sanctions for both legal entities and senior management.
- 0: No, senior management cannot be held responsible or there is no criminal liability for legal entities.

DNFBPS

Q31: Are TCSPs required by law to identify the beneficial owner of the customers?

- 4: Yes, TCSPs are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
- 2: TCSPs are partially covered by the law.
- 0: No, TCSPs are not covered by the law and do not have anti-money laundering obligations.
-

Q32: Are lawyers, when carrying out certain transactions on behalf of clients (e.g. management of assets), required by law to identify the beneficial owner of the customers?

- 4: Yes, lawyers are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
- 0: No, lawyers are not covered by the law and do not have anti-money laundering obligations.
-

Q33: Are accountants required by law to identify the beneficial owner of the customers?

- 4: Yes, accountants are required by law to identify the beneficial owner of their customer when performing transactions on behalf of their clients.
- 0: No, accountants are not covered by the law and do not have anti-money laundering obligations.
-

Q34: Are real estate agents required by law to identify the beneficial owner of the customers?

- 4: Yes, real estate agents are required to identify the beneficial owner of their clients buying or selling property.
- 2: Real estate agents are partially covered by the law.
- 0: No, real estate agents are not covered by the law and do not have anti-money laundering obligations.
-

Q35: Are casinos required by law to identify the beneficial owners of the customers?

- 4: Yes, casinos are required by law to identify the beneficial owners of their customers or casinos are prohibited by law.

0: No, casinos are not covered by the law and do not have anti-money laundering obligations.

Q36: Are dealers in precious metals and stones required by law to identify the beneficial owner of the customers?

4: Yes, dealers in precious metals and stones are required to identify the beneficial owner of clients in all transactions or in transactions above a certain threshold.

0: No, dealers in precious metals and stones are not covered by the law and do not have anti-money laundering obligations.

Q37: Are dealers in luxury goods required by law to identify the beneficial owner of the customers?

4: Yes, dealers in luxury goods are required to identify the beneficial owner of their customer.

0: No, dealers in luxury goods are not covered by the law and do not have anti-money laundering obligations.

Q38: Does the law require relevant DNFBPs to also verify the identity of beneficial owners identified?

4: Yes, the identity of the beneficial owner should always be verified through, for instance, a valid document containing a photo, an in-person meeting, or other mechanism.

0: No, there is no requirement to verify the identity of the beneficial owner.

Q39: Does the law require DNFBPs to conduct independent verification of the information on the identity of the beneficial owner(s) provided by clients?

4: Yes, independent verification is always required or required in cases considered as high-risk (higher-risk business relationships, cash transactions above a certain threshold, foreign business relationships).

0: No, there is no legal requirement to conduct independent verification of the information provided by clients.

Q40: Does the law require enhanced due diligence by DNFBPs in cases where the customer or the beneficial owner is a PEP or a family member or close associate of the PEP?

4: Yes, DNFBPs are required to conduct enhanced due diligence in cases where their client is a foreign or a domestic PEP, or a family member or close associate of a PEP.

2: Yes, but the law does not cover both foreign and domestic PEPs and their close family and associates.

0: No, there is no requirement for enhanced due diligence in the case of PEPs and their associates.

Q41: Does the law allow DNFBPs to proceed with a business transaction if the beneficial owner has not been identified?

4: No, a business transaction may only proceed if the beneficial owner of the client has been identified.

0: Yes, relevant DNFBPs are allowed to proceed with a business transaction regardless of whether or not the beneficial ownership has been identified.

Q42 Does the law require DNFBPs to submit a suspicious transaction report if the beneficial owner cannot be identified?

4: Yes, the law establishes that relevant DNFBPs have to submit a suspicious transaction report if they cannot identify the beneficial owner of their clients.

2: The law establishes that suspicious transaction reports should be submitted only if there is enough evidence of wrongdoing.

0: No, a business transaction may only proceed if the beneficial owner of the client has been identified.

Q43: Does the law allow the application of sanctions to DNFBPs' directors and senior management?

4: Yes, the law envisages sanctions for both legal entities and senior management.

0: No, senior management cannot be held responsible or there is no criminal liability for legal entities.

PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Guidance: Domestic and foreign authorities should be able to access beneficial ownership information held by other authorities in the country in a timely manner, though, for instance, access to central beneficial ownership registries. Domestic authorities should also have the power to obtain beneficial ownership information from third parties on behalf of foreign authorities or to share information without the consent of affected parties in a timely manner.

Governments should publish guidelines explaining what type of information is available and how it can be accessed.

Q44: Does the law impose any restriction on information sharing (e.g. confidential information) across in-country authorities?

4: No, there are no restrictions in place.

2: There are some restrictions on sharing information across in-country authorities.

0: Yes, there are significant restrictions on sharing information across in-country authorities.

Q45: How is information on beneficial ownership held by domestic authorities shared with other authorities in the country?

4: Information on beneficial ownership is shared through a centralised database, such as a beneficial ownership registry.

3: There are several online databases managed by different authorities that contain relevant beneficial ownership information (e.g. company registry, tax registry, etc.) that can be accessed.

2: Domestic authorities can access beneficial ownership information through written requests or memoranda of understanding.

1: Domestic authorities may only access beneficial ownership maintained by another authority if there is a court order.

0: Information on beneficial ownership is not shared.

Q46: Are there clear procedural requirements for a foreign jurisdiction to request beneficial ownership information?

4: Yes, information on how to proceed with a request for accessing beneficial ownership information is made available through, for instance, the domestic authority's website or guidelines.

0: No, information on how to proceed with a request is not easily available.

Q47: Does the law allow competent authorities in your country to use their powers and investigative techniques to respond to a request from foreign judicial or law enforcement authorities?

4: Yes, domestic authorities may use their investigative powers to respond to foreign requests.

0: No, the law does not allow domestic competent authorities to act on behalf of foreign authorities.

Q48: Does the law in your country restrict the provision or exchange of information or assistance with foreign authorities (e.g. it is impossible to share information related to fiscal matters; restrictions related to bank secrecy; restrictions related to the nature or status of the requesting counterpart, among others)?

4: No, the law does not impose any restriction.

2: There are some restrictions that hamper the timely exchange of information.

0: Yes, there are significant restrictions in the law.

Q49 Do foreign competent authorities have access to beneficial ownership information maintained by domestic authorities?

4: Yes, online for free through, for instance, a beneficial ownership registry.

3: Yes, online upon registration.

2: Yes, online upon the payment of a fee and registration.

1: Beneficial ownership information can be accessed only upon motivated request.

0: No.

PRINCIPLE 9: TAX AUTHORITIES

Guidance: Tax authorities should have access to beneficial ownership registries or, at a minimum, have access to company registries and be empowered to request information from other government bodies, legal entities, financial institutions and DNFBPs. There should be mechanisms in place, such as memoranda of understanding or treaties, to ensure that information held by domestic tax authorities is exchanged with foreign counterparts.

Q50 Do tax authorities have access to beneficial ownership information maintained by domestic authorities?

4: Yes, online for free through, for instance, a beneficial ownership registry.

3: Yes, online upon registration.

2: Yes, online upon the payment of a fee and registration.

1: Beneficial ownership information can be accessed only upon motivated request.

0: No.

Q51: Does the law impose any restriction on sharing beneficial ownership information with domestic tax authorities (e.g. confidential information)?

4: No, the law does not impose restrictions.

2: The law does not impose significant restrictions, but exchange of information is still limited or cumbersome (e.g. a court order is necessary)

0: Yes, there are significant restrictions in place.

Q52: Is there a mechanism to facilitate the exchange of information between tax authorities and foreign counterparts?

4: Yes. The country is a member of the OECD tax information exchange and has signed tax information exchange agreements with several countries.

2: There is a mechanism available, but improvements are needed.

0: No.

PRINCIPLE 10: BEARER SHARES AND NOMINEES

Guidance: Bearer shares should be prohibited and until they are phased out they should be converted into registered shares or required to be held with a regulated financial institution or professional intermediary.

Nominee shareholders and directors should be required to disclose to company or beneficial ownership registries that they are nominees. Nominees must not be permitted to be registered as the beneficial owner in such registries. Professional nominees should be obliged to be licensed in order to operate and to keep records of the person(s) who nominated them.

Q53: Does the law allow the use of bearer shares in your country?

4: No, bearer shares are prohibited by law.

0: Yes, bearer shares are allowed by law.

Q54: If the use of bearer shares is allowed, is there any other measure in place to prevent them being misused?

2: Yes, bearer shares must be converted into registered shares or share warrants (dematerialisation) or bearer shares have to be held with a regulated financial institution or professional intermediary (immobilisation).

1: Bearer share holders have to notify the company and the company is obliged to record their

identity or there are other preventive measures in place.

0: No, there are no measures in place.

Q55: Does the law allow the incorporation of companies using nominee shareholders and directors?

4: No, nominee shareholders and directors are not allowed.

0: Yes, nominee shareholders and directors are allowed.

Q56: Does the law require nominee shareholders and directors to disclose, upon registering the company, the identity of the beneficial owner?

2: Yes, nominees need to disclose the identity of the beneficial owner.

0: No, nominees do not need to disclose the identity of the beneficial owner or nominees are not allowed.

Q57: Does the law require professional nominees to be licensed?

0.5: Yes, professional nominees need to be licensed.

0: No, professional nominees do not need to be licensed.

Q58: Does the law require professional nominees to keep records of the person who nominated them?

0.5: Yes, professional nominees need to keep records of their clients for a certain period of time.

0: No, professional nominees do not need to keep records.

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